

Illinois will give a credit for taxes properly due and paid in another state. See 86 Ill. Adm. Code 150.310. (This is a GIL).

October 26, 2001

Dear Xxxxx:

This letter is in response to your letter dated September 7, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

We are in the process of updating our records on your state's sales and use taxes levied on motor vehicles and other tangible personal property. We are submitting the following information which may be helpful in responding to our questions.

The STATE Retailers' and Consumers' Sales and Use Tax Act, as amended, levies a state use tax at the rate of 4% of the cost price or fair market value, whichever is the lesser, of tangible personal property purchased at retail outside this State, upon its first use, consumption or storage within this State. In addition to the state rate of 4%, up to another 3% of county use tax may be imposed.

Credit against the STATE use tax, not to exceed the tax imposed by our law, is granted for a sales or use tax legally imposed and paid in any state which grants credit for a like tax paid in STATE. However, no credit can be given unless that state grants credit for such taxes paid in STATE. No tax is charged a non-resident purchaser who executes an affidavit (our Form ST-8) and intends to immediately remove the vehicle for registration in another state.

In reference to your state's taxes, we request that you complete the enclosed questionnaire and return to this office no later than October 31, 2001.

We are unable to answer your letter in the manner you requested. The Retailers' Occupation Tax Act imposes a tax upon persons engaged in the business of selling at retail tangible personal property. 35 ILCS 120/2 (2000 State Bar Edition). The Use Tax Act imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer. 35 ILCS 105/3 (2000 State Bar Edition).

Sales of new vehicles are subject to sales tax based on the gross receipts from the sale. Under 86 Ill. Adm. Code 130.425 (copy enclosed), the value of, or the credit given for a trade-in would not be counted as gross receipts. Any tax due would be based upon the gross receipts received in payment for the vehicle.

Form RUT-25, Use Tax Return, is used to remit Use Tax to the Department if a new or used motor vehicle, watercraft, or aircraft is purchased from an out-of-State retailer. Form ST-44, Use Tax Return is used to remit Use Tax to the Department for items of tangible personal property other than that remitted on the RUT-25. In addition, the Use Tax does not apply to the use, in this State, of tangible personal property that is acquired outside this State by a nonresident individual who then brings the property to this State for use here, and who shall have used the property outside this State for at least 3 months before bringing the property to this State. See the enclosed copy of 86 Ill. Adm. Code 150.315.

Illinois will give a credit for taxes properly due and paid in another state. See 86 Ill. Adm. Code 150.310. In addition, depreciation is allowed for out-of-State use. See 86 Ill. Adm. Code 150.110.

If sellers make delivery of tangible personal property from a point in this State to a point outside this State, not to be returned to this State the interstate commerce exemption would apply. If delivery of the tangible personal property is taken in Illinois, tax will be due. The Interstate Commerce Exemption cannot be claimed if the tangible personal property is returned to the State of Illinois. Please see Section 130.605(a)(4)(A), which explains that in some circumstances (drive-away decal and plate swap), an automobile can be delivered to a purchaser in Illinois without triggering any Illinois tax liability.

The State of Illinois does not have a state imposed local county tax which requires a roll back for property tax. Nor does it have a sales and use transit tax or a countywide sales and use tax for educational purposes. Under the Special County Occupation Tax for Public Safety Law, 55 ILCS 5/5-1007 (2000 State Bar Edition), counties can impose a tax upon persons engaged in the business of selling tangible personal property at retail. See the enclosed copies of 86 Ill. Adm. Code 670.101, 670.105, 670.110, 670.115, 670.120, 670.125, and 670.130. Section 670.120 of those rules incorporates all of the provisions of the Retailers' Occupation Tax administrative rules.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Melanie A. Jarvis  
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MAJ:msk  
Enc.